

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

(Redwood City, California)

FRENCH REDWOOD, INC. d/b/a  
SOFITEL SAN FRANCISCO BAY 1/

Employer

and

CEMETERY WORKERS & GREENS  
ATTENDANTS LOCAL 265, SEIU, AFL-CIO 2/

Petitioner

**20-RC-17923****DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board; hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein. 3/
3. The labor organization(s) involved claim(s) to represent certain employees of the Employer. 4/
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act. 5/
5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act: 6/

All full-time and regular part-time housekeeping employees, including room attendants, turn down attendants, floor house persons, lobby house persons, laundry attendants, gift shop attendants, housekeeping floor supervisors and housekeeping office supervisors employed by the Employer at its hotel in Redwood City, California; excluding all other employees, confidential employees, guards and supervisors as defined in the Act.

**DIRECTION OF ELECTION**

An election by secret ballot shall be conducted by the undersigned among the employees in the unit(s) found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit(s) who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote.

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Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by CEMETERY WORKERS & GREENS ATTENDANTS LOCAL 265, SEIU, AFL-CIO.

#### LIST OF VOTERS

In order to insure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. **Excelsior Underwear, Inc.**, 156 NLRB 1236 (1966); **NLRB. Wyman-Gordon Company**, 394 U.S. 759 (1969). Accordingly, it is hereby directed that with 7 days of the date of this Decision 3 copies of an election eligibility list, containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned who shall make the list available to all parties to the election. **North Macon Health Care Facility**, 315 NLRB No. 50 (1994). In order to be timely filed, such list must be received in the Regional Office, 901 Market Street, Suite 400, San Francisco, California 94103, on or before January 30, 2004. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

#### RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the **Executive Secretary, 1099-14th Street, NW, Washington, DC 20570-0001**. This request must be received by the Board in Washington by February 6, 2004.

Dated January 23, 2004.

at San Francisco, California

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Acting Regional Director, Region 20

- 1/ The name of the Employer is in accord with the stipulation of the parties.
- 2/ The name of the Union is in accord with the stipulation of the parties.
- 3/ The parties stipulated, and I find, that the Employer is a California corporation with a place of business in Redwood City, California, where it is engaged in the business of operating a hotel providing lodging, food and beverage services. The parties further stipulated, and I find, that during the twelve-month period ending November 30, 2003, the Employer derived gross revenue in excess of \$500,000 and purchased and received supplies valued in excess of \$5,000 which originated from points outside the State of California. Based on the parties' stipulation to such facts and the record evidence, I find that it will effectuate the purposes and policies of the Act to assert jurisdiction in this matter.
- 4/ The parties stipulated, and I find, that the Union is a labor organization within the meaning of the Act.
- 5/ The parties stipulated, and I find, that there is no collective-bargaining agreement covering any of the employees in the petitioned-for unit.
- 6/ By its amended petition, the Petitioner seeks to represent a unit comprised of all full-time and regular part-time housekeeping department employees, including room attendants, turn down attendants, floor house persons, lobby house persons, laundry attendants and gift shop attendants; excluding all other employees, housekeeping floor supervisors, housekeeping office supervisors, confidential employees, guards and supervisors as defined in the Act. The petitioned-for unit consists of approximately 40 employees. The only issue presented herein is whether four housekeeping floor supervisors (herein called floor supervisors) and two housekeeping office supervisors (herein called office supervisors) are statutory supervisors who must be excluded from the unit. The Petitioner contends that the floor and office supervisors should be excluded from the unit and the Employer takes the opposite position. As discussed below, I find that the individuals at issue in these classifications are not statutory supervisors. Accordingly, they will be included in the unit.

The Employer's Operation. The Employer operates a 421-room hotel in Redwood City, California, which has a restaurant and bar, banquet facilities, swimming pool, gift shop and health club. It employs approximately 200 persons, including managers and supervisors, and has the following departments: housekeeping, food and beverage, front office, reservations, accounting, human resources, sales and catering, and engineering. The engineering employees are represented for collective bargaining purposes by Stationary Engineers Local 39.

The Housekeeping Department. The housekeeping department operates seven days a week, from 6:30 a.m. until 11:30 p.m. There are approximately 49 housekeeping employees, including 23 room attendants, six turn down attendants, three house persons, four lobby house persons, four laundry attendants, three gift shop attendants, four housekeeping floor supervisors and two office supervisors. All of the housekeeping employees work full-time. There are 20 to 25 housekeeping employees on each shift. The housekeeping department is headed by Director of Housekeeping Terry Reese. Reese had been the director of housekeeping for seven months at the time of the hearing. He resided at the Employer's facility during that time. The record reflects that Reese has no assistant. He works from 8 a.m. to 8 p.m. each day, and he has a private office next to the housekeeping department.

The record establishes that Reese has direct responsibility for all personnel matters involving housekeeping employees. He personally interviews and hires housekeeping employees in conjunction with the Employer's human resources department. The floor and office supervisors play no role in the hiring process. Reese directs the work of housekeeping employees by relaying instructions to them through the floor and office supervisors. He also disciplines and evaluates them. While the floor supervisors and office supervisors report employee performance problems to Reese, he conducts his own independent investigations before disciplining any employee.

With regard to the evaluation of housekeeping employees, Reese conducts 30-day evaluations of new employees and annual evaluations thereafter. Reese testified that while he may consult with the floor and office supervisors, he conducts his own independent investigation of housekeeping employees' performance during the evaluation process. This includes directly observing the employees while they work and personally talking with employees. According to Employer Human Resources Director Nazee Domiray who has worked for the Employer for three years, the floor and office supervisors have never been involved in the Employer's evaluation process. Domiray testified that evaluations are done for the purpose of performance improvement and behavior development and have never been used for disciplinary purposes or to determine whether employees receive raises or other rewards. Pay raises given by the Employer are granted automatically and are not based on an evaluation of employee performance.

When Reese is off duty, he carries a cell phone and the floor and office supervisors are directed to contact him and/or the on-duty manager or night auditor for direction or assistance. According to Reese, he receives 20 to 40 phone calls a day, mostly from the floor and office supervisors. Because he lives at the Employer's facility, the floor and office supervisors often phone him until about 10:30 p.m. at night. When Reese goes on vacation, another Employer

manager substitutes for him. The floor and office supervisors do not substitute for Reese.

As indicated above, there are four floor supervisors and two office supervisors in the housekeeping department. Five of these six supervisors were in their positions prior to Reese's hire. One office supervisor was promoted to that position two months prior to the hearing. Five of the six supervisors were previously room attendants. The Employer has no job descriptions or established list of required qualifications for housekeeping employees. However, Reese testified that the qualifications he would seek in hiring persons for the floor supervisor position include knowledge of the job, good performance, good attendance, a sense of responsibility, being able to read and write and use a computer to input room status, and being able to comprehend directions. In hiring office supervisors, Reese seeks persons who are bilingual with good telephone skills, the ability to read and write, and some degree of computer knowledge. According to Reese, room attendants should also know how to read and write but need not have computer skills or be bilingual.

The Floor Supervisors. The floor supervisors spend most of their work time on the floors of the hotel. Their job, primarily, is to inspect rooms and to check room status. They typically check 80 rooms each day. They use a list showing which rooms need to be cleaned, which rooms are vacant and which rooms are to be occupied the next day. They ensure that the front desk has the correct information on the status of each room. The floor supervisors also use room inspection sheets as an informal reminder of what items to check on when they inspect rooms, such as whether the beds have been changed and whether the bathroom has been supplied with clean towels and other amenities. If a floor supervisor finds only one or two items are missing, he or she will usually put them in the room. If more items are missing or cleaning has not been performed, the floor supervisor may instruct the room attendant to return and finish the room. If a room attendant consistently fails to meet the Employer's standards in cleaning rooms, the floor supervisor may orally report the matter to Reese and Reese would decide what disciplinary action, if any, should be taken.

The floor supervisors do not fill out any written reports on the performance of housekeeping employees. If a guest, floor supervisor or an employee reports a problem with a housekeeping employee to Reese, he (Reese) conducts an independent investigation and handles the matter himself. The Employer has a progressive disciplinary process that involves initially giving an oral warning, then a written warning with an improvement plan, then suspension and lastly, termination. Reese testified that the report or recommendation of a floor or office supervisor carries no more weight in his decision-making process concerning discipline than does a recommendation made by any other housekeeping employee. The record contains no evidence of a floor supervisor

giving a recommendation that caused Reese to decide to discipline an employee.

In order to take time off, employees fill out a form and give it to Reese and he decides whether to approve or disapprove the request. Reese must also approve any overtime and obtains volunteers to work overtime based on their seniority.

The duties of the floor supervisors also include special projects assigned to them by Reese, such as cleaning rooms. Typically, the floor supervisors clean eight to ten rooms per week. They also work in the gift shop to cover the breaks of the gift shop attendants and they substitute for the office supervisors. The record indicates that there is no job description for the floor supervisors.

The Office Supervisors. There are two office supervisors. The office supervisors work at a desk in an open area of the housekeeping department. All hotel employees have access to this area, which is also used for uniform and key distribution. Except for two days a week, there is only one office supervisor on duty. On a daily basis, the office supervisors use the computer to put together room assignments for the various room attendants. Room attendants are permanently pre-assigned by Reese to clean particular sections of the hotel. The office supervisors use the computer to identify every room that was occupied in each room attendant's section. Then the office supervisor adds the rooms together so that there is a total of fifteen rooms for each room attendant to clean. He or she then prints the resulting assignment for the room attendant.

Office supervisors also answer guest calls asking for amenities, such as towels, shampoo, etc. When such requests are made, the office supervisors either take the item to the room or direct a floor house person or room attendant to deliver it. The office supervisors also handle the Employer's lost and found department. In addition, the office supervisors cover the lunch and break relief for the gift shop employees and substitute for the floor supervisors.

The Duties of Other Employees In the Petitioned-For Unit. The room attendants clean guest rooms and report repair problems directly to the engineering department. As indicated above, they typically, clean about fifteen rooms a day. The Employer has an "auto control" program under which senior room attendants self-inspect the rooms they have cleaned and notify the front desk that the room is available for occupancy. Room attendants call the housekeeping office if they encounter problems with a room such as finding a pet in a room or a do not disturb sign on the door. In such cases, Reese or the office supervisor may assign the room attendant another room to clean on the same floor under the Employer's established protocol for dealing with such situations.

Turn down attendants provide a turn down service to guests in the evening. This includes turning down the beds, leaving a water bottle on the night stand, changing the towels and leaving a card with weather information for the next day. Turn down attendants typically handle 40 rooms a day. Floor house persons vacuum assigned floors, carry out the trash and soiled linen from rooms and supply linen and amenities to assigned floors. Lobby house persons are responsible for cleaning and maintaining the lobby and other public areas of the hotel. Laundry attendants clean the laundry; and gift shop attendants handle retail sales, stocking and inventory for the Employer's gift shop.

Employee Meetings. Reese conducts separate meetings with the floor and office supervisors. No personnel matters are discussed at these meetings. Rather, they focus on the projects to be done on a particular day, changes in Employer policies, and other pertinent news. Reese also conducts meetings with the entire housekeeping staff. The floor and office supervisors are not involved in setting the agenda or in directing such meetings.

Wages, Hours and Other Working Conditions. The floor and office supervisors are hourly paid, as are the other housekeeping employees. The pay rate of the office supervisors is \$10.60 an hour. Floor supervisors receive \$12.05 an hour. Turn down attendants are paid \$9.85 an hour and room attendants are paid \$10.85 an hour. Housekeeping employees in other classifications earn between \$9.55 and \$10.85 an hour. As indicated above, pay raises are automatic and are not based on performance. All housekeeping employees, including floor and office supervisors, receive the same fringe benefits, punch the same time clock, and take their breaks in the same cafeteria. While the room attendants wear black dresses, the floor and office supervisors wear two-piece dark blue uniforms.

Analysis. As indicated above, the Petitioner contends that the floor and office supervisors must be excluded from the petitioned-for unit because they are statutory supervisors. The Employer takes the opposite view.

The term "supervisor" is defined in Section 2(11) of the Act as:

[A]ny individual having authority, in the interest of the Employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

In order to support a finding of supervisory status, an employee must possess at least one of the indicia of supervisory authority set out in Section 2(11) of the Act. *International Center for Integrative Studies*, 297 NLRB 601 (1990); *Juniper Industries, Inc.*, 311 NLRB 109, 110 (1993). Further, the authority must be exercised with independent judgment on behalf of the employer and not in a routine, clerical or perfunctory manner. *Clark Machine Corp.*, 308 NLRB 555 (1992); *Bowne of Houston, Inc.*, 280 NLRB 1222, 1223 (1986). In determining whether an individual is a statutory supervisor, the Board has a duty to employees not to construe supervisory status too broadly because the employee who is found to be a supervisor is denied the employee rights that are protected under the Act. *Hydro Conduit Corp.*, 254 NLRB 433, 347 (1981). A determination of supervisory status must be based on actual authority, and secondary indicia alone, such as job titles, differences in pay and attendance at meetings, are insufficient to establish that an employee is a statutory supervisor. *Laborers Local 341 v. NLRB*, *supra*; *Arizona Public Service Co. v. NLRB*, 453 F.2d 228, 231 fn. 6 (9th Cir. 1971); *Waterbed World*, 286 NLRB 425, 426 (1987). Finally, the burden of proving supervisory status is on the party that asserts that it exists. *Quadrex Environmental Co.*, 308 NLRB 101 (1992); *California Beverage Co.*, 283 NLRB 328 (1987); *Tucson Gas & Electric Company*, 241 NLRB 181 (1979).

In the instant case, the record does not support a finding that the floor or office supervisors are supervisors under the Act. Rather, the record shows that Reese holds and exercises direct supervisory authority over housekeeping employees and that the floor and office supervisors are merely conduits of Reese's authority. That is, their only role in this regard is to report problems to Reese and to relay directions from Reese to the housekeeping employees. The fact that the office supervisors assign a pre-established number of rooms in a pre-established area of the hotel to each room attendant does not establish their possession or exercise of statutory supervisory authority as it involves a routine function and does not appear to involve an exercise of any independent judgment. Likewise, the fact that the office supervisors can assign another room to a room attendant in the same area when one of the rooms originally assigned cannot be cleaned for some reason is insufficient to establish the possession or exercise of statutory supervisory authority. In sum, there is no evidence that the floor or office supervisors possess or exercise any of the types of authority set forth in Section 2(11) of the Act or that they effectively recommend any actions involving the exercise of such authority. The fact that they are called supervisors, attend separate meetings with management or are paid at a higher rate of pay does not make them statutory supervisors in the absence of evidence that they exercise actual supervisory authority. Accordingly, I find that the floor and office supervisors are not statutory supervisors.

Additionally, I find that the floor and office supervisors share a substantial community of interest with the petitioned-for employees warranting their inclusion in the unit. Thus, they



are employed in the housekeeping department as are the petitioned-for employees; they share common supervision with the petitioned-for employees; they have regular contact with the petitioned-for employees; they regularly substitute for the gift shop employees who are included in the unit; they receive the same benefits as the petitioned-for employees; and they use common facilities such as the time clock and lunch room with the petitioned-for employees. In these circumstances, the floor and office supervisors will be included in the unit.

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